

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 May 2007

CASE NO.: 2005-DBA-17

In the Matter of:

Disputes concerning proposed debarment for labor standards violations by:

Mabarak Ahmed "Roger" Rajpoot,)
)
With respect to laborers and mechanics)
employed by KDMG, Inc. and Koloa)
Development on Contract No. XX1060,)
financed by the U.S. Department of Housing)
and Development through the Los Angeles)
County Community Development Corporation)
re: "Nancy Wilson Project," 1451 W. 105th)
Street, L.A., CA.,)
)
Respondent.)
_____)

DECISION AND ORDER

This proceeding is before me pursuant to the Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.*, the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 *et seq.*, the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et. seq.*, and the U.S. Department of Labor regulations at 20 C.F.R. Part 5. Both the Housing and Community Development Act and the Contract Work Hours and Safety Standards Act are Davis-Bacon Related Acts (collectively, "the Related Acts"). *See* 29 C.F.R. §§ 5.1(a)(46) and 5.1(a)(3).

The Secretary of Labor ("the Secretary") has brought claims against Mabarak Ahmed "Roger" Rajpoot ("Respondent"), the Project Manager for prime contractor, KDMG, Inc. ("KDMG"). The Secretary alleges that KDMG violated the Related Acts during its work in 2002 and 2003 on the renovation of a residential building located at 1451 W. 105th Street, Los Angeles, California, known as the Nancy Wilson Project ("the Wilson Project"). In particular, the Secretary alleges that laborers and mechanics employed by KDMG and Koloa Development, a subcontractor on the Wilson Project, were underpaid by a total of \$128,737.87. The Secretary also alleges that Respondent, as Project Manager for KDMG, committed aggravated and willful violations of the Related Acts for which he must be debarred from federal contracts. Respondent denies the Secretary's allegations that he knowingly falsified KDMG's certified payroll records or participated in a so-called kickback scheme, and opposes debarment.

PROCEDURAL HISTORY

The Secretary of Labor filed an Order of Reference (ALJX 1) on July 18, 2005. The Order of Reference included two exhibits: (1) a letter to Respondent dated September 29, 2003 stating the Secretary's basic claims; and, (2) a letter dated October 26, 2003 from Respondent's counsel disputing the claims and requesting a hearing before the Office of Administrative Law Judges ("OALJ").

OALJ Associate Chief Judge Thomas Burke issued a Pre-hearing Order on August 3, 2005 (ALJX 2). On September 6, 2005, the Secretary filed her Pre-Hearing Exchange document stating the names of the persons alleged to have been underpaid and the nature of the alleged violations under the Acts and other relevant information related to this case (ALJX 3). On September 13, 2005, Respondent filed his Pre-hearing Exchange document in response to the Secretary's Pre-Hearing Exchange document (ALJX 4).

This case was assigned to me, and I issued a Pre-hearing Order (ALJX 5) on September 26, 2005. On October 26, 2005, I issued an order denying Respondent's motion to continue the trial, finding no good cause shown for a six-month continuance (ALJX 6). The Secretary filed an Amended Pre-Hearing Exchange document on October 31, 2005 (ALJX 7). On November 3, 2005, I issued an order approving the parties' joint stipulation to continue trial to March 21-24, 2006, in Pasadena, California (ALJX 8). On March 17, 2006, Respondent filed his second amended Exhibit List (ALJX 9).

A hearing was held on March 21 and 22, 2006, in Pasadena, California. Respondent and the Secretary were represented by counsel at the hearing. Secretary's Exhibits ("SX") 1 through 37 were admitted into evidence with no objections. TR at 8-9. Respondent's Exhibits ("RX") 1 and 2 were admitted into evidence over the Secretary's objection. TR at 10-15. Administrative Law Judge Exhibits ("ALJX") 1 through 9 were admitted into evidence with no objections. TR at 18-22. At the close of the hearing, the record was left open for the submission of post-hearing briefs. TR at 379-83. On July 13, 2006, the Secretary served her Post-Trial Brief and Proposed Findings of Fact/Conclusions of Law (ALJX 10). On July 26, 2006, Respondent served his Post-Trial Brief and Proposed Findings of Fact and Conclusions of Law (ALJX 11) and the record closed thereafter.

STIPULATIONS

The parties stipulated that:

1. Contract No. XX 1060 ("the Contract") was a prevailing wage contract under the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 *et seq.*), and the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701 *et seq.*). TR at 24.

After reviewing the parties' closing briefs and the evidence submitted, I find the following additional, undisputed facts:

2. At all relevant times, KDMG was the prime contractor on the Contract. The Contract was for the renovation of a building known as the Wilson Project.
3. The Contract incorporated and was subject to the labor standard provisions of the Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.* (“DBA”), the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 *et seq.* (“HCDA”), and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3701 *et seq.* (“CWHSSA”) (i.e., the Related Acts), and it included Wage Determination CA 020028 dated 08/09/2002. The Contract required weekly payment of prevailing wages to employees who worked on the Wilson project.
4. This matter was heard on March 21 and 22, 2006, in Pasadena, California, and both parties had an opportunity to present documentary evidence and testimony.
5. The sole issue for hearing was whether Respondent should be debarred from federal government contracts pursuant to 29 C.F.R. § 5.12(a)(1) for aggravated and willful violations of the Related Acts.
6. At all relevant times, Respondent was employed by KDMG as the Project Manager on the Wilson Project. He was on the jobsite two to three days a week, for about three hours at a time. Respondent’s duties, among other things, included:
 - (a) overseeing the Wilson Project to ensure that the work was being completed as required by the Contract;
 - (b) representing KDMG at the worksite and meeting with inspectors to ensure that the work was being done according to specifications.
7. On December 24, 2002, Respondent was present at First Federal Bank in Santa Monica, California, where laborers and mechanics who worked on the Wilson Project received and cashed their paychecks, among other things.

ALJX 10 at 12-16; ALJX 11 at 9-11.

ISSUE

The issue is whether Respondent committed aggravated or willful violations of the Related Acts or disregarded his obligations to employees within the meaning of the DBA and its regulations and, as a result, should be debarred from doing business with the federal government for three years. TR 26-31.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Factual Background

This case involves a federal contract for renovation work known as the Wilson Project. KDMG was the prime contractor on Contract No. XX 1060, which was financed by the U.S. Department of Housing and Development through the Los Angeles County Community Development Corporation (“CDC”). As previously noted, the Contract incorporated and was subject to the Housing and Community Development Act of 1974 and the Contract Work Hours and Safety Standards Act. *See* SX 4 at 0063; TR 40. The Contract also included Federal Wage Determination CA 020028, dated 08/09/2002, which set forth the prevailing wage rates and fringe benefits that were required to be paid to laborers and mechanics working on the Wilson Project. *See* Stip. Nos. 1-3; SX 6; TR 37-40:17-22; ALJX 10 at 2; ALJX 11 at 2.

KDMG was formed in 2001 as a construction company with an emphasis on bidding for government construction projects. Rajiv Desai (“Mr. Desai”) was President of the corporation. Mr. Desai owned 100% of the company’s stock, and his money funded the company. He invested in KDMG and was trained as a scientist with a Ph.D. in mechanical engineering. Kevin Kaul was Mr. Desai’s partner in charge of the business end. Respondent was hired as a construction expert because he had extensive experience as a contractor and the expertise necessary to oversee KDMG’s construction projects. *See* TR 163:4-164:24; 190:17; 281:3-4; ALJX 10 at 2; ALJX 11 at 2.

KDMG performed work on the Wilson Project from approximately November 11, 2002 until January 10, 2003. *See* Stip. No. 2; TR 43:13-15, 55:14-17, 95:10-12; 107:9-11; 126:24-127:1; 311:5-23; 349:19-22; SX 8-15; ALJX 10 at 2; ALJX 11 at 2.

An investigation conducted by the Wage and Hour Division of the U.S. Department of Labor (“Wage and Hour”) concluded that the labor standards provisions of the Contract were violated on the Wilson Project. *See* ALJX 1. Wage and Hour concluded that the certified payrolls were falsified, laborers and mechanics (“laborers” or “employees”) who worked on the Wilson Project were not paid the wage rates required by the Wage Determination for all hours worked, and these employees were required to kick back a portion of their wages to KDMG. Wage and Hour concluded that underpayments of wages in the amount of \$128,737.87 were due to employees who worked on the Wilson Project. *See* TR 348:7-25-354:1-361:22; SX 31.

The Administrator determined that KDMG, as prime contractor on the Wilson Project, and Mr. Desai, Kevin Kaul and Respondent, as responsible parties, should be debarred from federal contracts for three years for aggravated and willful violations of the Acts. *See* ALJX 1. KDMG, Mr. Desai and Mr. Kaul resolved the debarment action through settlement with the Department of Labor. *See* TR 361:23-362:15; SX 34. The CDC paid \$49,999 to the Department of Labor in full settlement of the back wages owed to employees. *See* TR 361:1-11; SX 33.

Respondent is an experienced construction contractor who had operated his own business, MAAR Construction, for at least fourteen years at the time of hearing. *See* TR 269:15-270:14; ALJX 10 at 3. Prior to the Wilson Project, the CDC hired Respondent as the prime

contractor on a DBA contract for a project known as the “Cancun Restaurant.” *See* TR 62:8-21, SX 35 at 0321. Through this work, Respondent knew of the labor standards provisions applicable to work on DBA contracts, including the requirement to pay prevailing wage rates on a weekly basis set by a Wage Determination, and to submit accurate certified payrolls to the contracting agency. *See* TR 62:19-21; 271:20-24, 273:1-12, 274:9-275:15, SX 36, 37; ALJX 10 at 3.

Respondent prepared the document that KDMG used to successfully bid on the Wilson Project Contract. TR 275:25-277:1-24; SX 3; ALJX 10 at 4. Once the Contract was awarded to KDMG, Respondent commenced his role as Project Manager. Respondent visited the worksite at least two to three times per week to ensure that work was proceeding appropriately and to determine whether additional materials were needed. *See* TR 286:7-18, 287: 1-13. Respondent also acted as the liaison between KDMG and the CDC. *See* TR 281:6-21, SXs 19, 24. Respondent signed off on Authorizations for Check Requests for purposes of receiving progress payments from the CDC. In so doing, Respondent certified that the work covered by the Check Request had been performed in compliance with the requirements of the Contract. SXs 19, 24, 26, 27. KDMG received progress payments of \$32,546.09 and \$17,379.59 based on the Check Requests that Respondent signed. TR 206-07, 214-15, 307-10, 327-29 SXs 26, 27; ALJX 10 at 4.

As Project Manager, Respondent had primary responsibility, on behalf of KDMG, for overseeing the work on the Wilson Project. Stip. No. 6; TR 280:17-23; TR 282:6-9, TR 299:18-300:8; ALJX 10 at 4. Employees who worked on the Wilson Project understood that Respondent was “the big boss” (TR 88:8-14); the “superintendent . . . the guy that was in charge or running things” (TR 113:1-10); the “one that was supposed to sign everything to have everything done.” TR 131:22-132:2; ALJX 10 at 4. One project employee stated that the subcontractor’s agent, William Koloamatangi (“Mr. Koloa”), would tell him that he had to talk to Respondent if he needed to get paid.¹ TR 113.

None of the employees who worked² on the Wilson Project were paid on a weekly basis. *See* 89:15-17, 109:2-3, 145:18-19. Certain employees were paid lump sum payments, once or twice, without regard for the number of hours worked or the wage rates required by the Wage Determination. *See* TR 109: 21-25, 110:1-3; 146:17-22, 147:1-12; ALJX 10 at 4. Other employees were “helpers” who assisted, for example, plumbers to re-pipe the apartments. Neither KDMG nor Koloa paid the helpers; instead, the plumbers had to pay them out of the wages they received. *See* TR 92:21-93:1, 111:6-112:21, 146:1-22; ALJX 10 at 4.

None of the employees who worked on the Wilson Project were paid the wage rates or fringe benefits required by the Wage Determination or overtime rates. *See* TR 349:3-5; ALJX 10 at 5. Respondent knew that employees had not been paid as required by the Contract. TR 294:5-

¹ Although Respondent’s company, MAAR Construction, was originally slated to be the subcontractor on the Wilson Project, KDMG signed a contract with Koloa Development listing it as the subcontractor. *See* SX 7; ALJX 11 at 2-3. Mr. Koloamatangi is the principal owner of Koloa Development. *See* TR at 218.

² At least some of the workers (*see* TR 226:17-20) were ostensibly employed by Koloa Development, whom KDMG had proposed as subcontractor on the Wilson Project. However, Koloa was never officially approved as a subcontractor by the CDC. *See* TR 43:4-12. Thus, the employees who worked on the Wilson Project were employed by KDMG, not Koloa.

299:14. Employees repeatedly complained to Respondent that they were not being paid throughout the duration of the Wilson Project. TR 295:2- 296:2, 297:21-298:2, 299:2-6; ALJX 10 at 5. Respondent warned Mr. Kaul of KDMG that employees might complain to “Labor Board inspectors” because they were not being paid as required by the Contract. TR 296:3-16, 297:10-14; ALJX 10 at 5. When the employees were paid for a portion of their earned wages, either KDMG or Koloa Development would make the payment in cash or check. TR at 364-65.

Respondent prepared the certified payrolls for submission to the CDC that purported to represent the hours worked and wages paid to the employees who worked on the Wilson Project. TR at 367. Respondent filled in the information required in each column on the certified payroll form, including the employee name, labor classification, hours worked, hourly rate, gross and net pay, and check number. TR 292:14-293:16, 367; SX 8-16; ALJX 10 at 5. Respondent also calculated the required deductions for purposes of the certified payrolls. TR 292:21-23.

Respondent was aware that the certified payrolls he filled out were to be submitted to the CDC. TR 293:22-25. He was also aware that the certified payrolls were supposed to be accurate (TR 297:4-9), and that the employees who worked on the Wilson Project were supposed to be paid weekly. TR 299:12-14; ALJX 10 at 5.

None of the certified payrolls were accurate for the entire period from the beginning of the Wilson Project until it concluded in January 2003. TR at 365-66.

On December 24, 2002, Christmas Eve, Respondent, Kevin Kaul and Rajiv Desai from KDMG, William Koloamatangi, and the Wilson Project employees gathered at a bank in Santa Monica. TR 300:17-24; 305:3-21. Respondent brought the employees into the bank one at a time. TR 300:20-24. Once inside the bank, the employees were required to cash checks made out to them and return a portion of the cash to KDMG. TR 110:10-111:2. Respondent observed the employees cashing checks and returning cash back to KDMG. TR 305:3-21; ALJX 10 at 5.

Carmen Simon

Carmen Simon testified that at the time of trial, she had been employed by the CDC for eight years. TR at 36. She was the labor compliance supervisor for the CDC at the Wilson Project, monitoring the project to ensure that employees were being paid the prevailing wage. *Id.*

Ms. Simon testified that the Wilson Project involved the use of federal funds for painting, roofing, and re-plumbing to rehabilitate a residential building. TR at 37-38. She identified several exhibits as documents which were provided to KDMG as the prime contractor of the Wilson Project, including information about the requirements for determining and paying the prevailing wage rates to employees on the job. TR at 38-41; SX 1-7. Specifically, SX 1 at 1 and SX 2 at 5 refer to the requirement of the DBA prevailing wage. Ms. Simon also stated that KDMG’s bid to complete the Wilson Project for \$180,000 was accepted and she identified the Contract and the Wage Determination as SX 4 and 6, respectively. TR at 40; SX 3. The Wage Determination set forth the wages that were to be paid to project employees. TR at 40.

Ms. Simon next testified that KDMG was given a "Labor Compliance Preconstruction Checklist" which shows that a meeting took place between the CDC and KDMG wherein the CDC: discussed the labor compliance requirements under the Contract and informed KDMG that the Contract must comply with federal labor standards; provided posters for posting on the job site; and went over the forms and filing requirements for payroll. TR at 40-42; SX 5; SX 37. Ms. Simon further testified that the CDC never approved Koloa Development as a subcontractor on the Wilson Project. TR at 42-43.

Ms. Simon verified that work on the Wilson Project started during the week ending November 11, 2002. TR at 43. Since the Wilson Project was a prevailing wage job, Ms. Simon testified that KDMG was required to submit certified payrolls on a weekly basis to CDC. TR at 43-44, 55. Ms. Simon identified the certified payrolls and supplementary payrolls submitted for the Wilson Project. TR at 44-49; SX 8-16. Ms. Simon identified SX 19 as inspection reports prepared by CDC inspector Bert Casanova, who was sent to the Wilson Project to conduct inspections including a headcount of employees on the project. TR at 49-53; SX 19.

Ms. Simon testified that she went to the Wilson Project site in January 2003. She met Respondent, who identified himself as the Project Manager for KDMG. TR at 52; SX 25 at 227. Ms. Simon also interviewed employees at the site. TR at 52-53. Ms. Simon further testified that a labor compliance representative under her supervision visited the worksite and spoke to some employees who mentioned they were not being paid properly. TR at 53. Soon thereafter, CDC sent a discrepancy letter notifying KDMG that there were labor compliance issues, including: employees not referenced on the certified payroll reports who claimed to have worked eight-hour days or more at the Wilson Project; missing hours reported; improper wage rates used; different check numbers payable to the same employees for the same day's work; the same check numbers payable to different employees; and Check Requests signed by Respondent on behalf of KDMG representing that the work required under the contract had been done and the employees had been paid when, in fact, they had not been fully paid. TR at 53-60; SX 20-24 at 225(a)-225(d). Respondent handled the CDC's inquiries for KDMG. TR at 61; SX 24.

Michele Bonnet

Michele Bonnet testified that she has been a Wage and Hour investigator with the U.S. Department of Labor for seventeen years, and that she took over the KDMG investigation after her predecessor, Marie Koshkarian, left Wage and Hour. TR at 344. The investigation consisted of interviews of Wilson Project employees and a review of documents provided by the CDC and KDMG, including the Wilson Project contract, the certified payrolls, inspection reports, the wage determination, and correspondence. TR at 345.

Ms. Bonnet testified that pursuant to the investigation that began in January 2003, Wage and Hour concluded there were labor violations which included the failure of KDMG to pay the prevailing wages, including fringe benefit amounts, failure to pay overtime, submission of falsified certified payrolls, and kickbacks to KDMG from the employees. TR at 345-48.

Ms. Bonnet explained that Wage and Hour set forth its conclusions regarding the violations in a determination letter attached the Order of Reference. TR at 347; SX 34; ALJX 1.

Wage and Hour charged KDMG, as prime contractor, with the violations. TR at 347-48. In addition, individuals associated with KDMG were also charged with the violations, including Rajiv Desai, Kevin Kaul, and Respondent. TR at 348.

Ms. Bonnet testified that KDMG's certified payrolls did not accurately reflect all employees who worked on the Wilson Project. TR at 348. Wage and Hour reached this conclusion by comparing the information gathered from the employees' interview statements with the certified payrolls. There were a number of inconsistencies or discrepancies based on what the employees indicated they were paid. Specifically, the employees had indicated that they were not paid weekly and were not paid the prevailing wages that were reported on the certified payroll. In addition, there were other inconsistencies involving the number of work hours reported on the certified payrolls and the fact that the certified payrolls reflected check numbers, whereas some employees indicated they had received only cash. Some employees said that they were paid on a salary basis or on a per unit basis. Others indicated that they were paid hourly, at \$10.00 an hour. However, these rates were not on the certified payroll. Rather, there were hourly rates reported on the certified payrolls that did not correspond to the testimony of the employees. TR at 348-49.

Ms. Bonnet testified that in reviewing the inspection reports, or based on what employees on the job site said, there were three people who worked on the job site but never appeared in any certified payroll. Those three individuals were James Steward, Larry Williams, and Ramel Shaheed, two of whom worked on the job site throughout nearly the entire project, from the end of November 2002 to the end of December 2002 or beginning of January 2003. TR at 349.

Ms. Bonnet also stated that in addition to those three individuals, there were another three employees—Genell Vernon, Arthur Harris, and Walter Broussard—who worked on the job site and were only recorded on one certified payroll for December 4th, 2002. The December 4th, 2002 payroll was a supplementary payroll which was requested by the CDC after a CDC inspector had been to the job site on that date, interviewed these three individuals who were working on the job site, and then reported the discrepancy to KDMG. KDMG was notified that these individuals were working on the job site but were not listed in the certified payroll. Consequently, a supplementary payroll for the three individuals was submitted that day. Although the supplementary payroll indicates that the three employees were paid for their work on December 4, 2002, Ms. Bonnet testified that there is no evidence that they actually received the checks corresponding to the check numbers listed next to their names. TR at 349-50; SX 24 at 225A and 225D.

Respondent represented himself as responsible for replying to the CDC's inquiries into KDMG's labor compliance status in early February 2003, and he telefaxed a detailed explanation on behalf of KDMG with amended certified payrolls, paperwork for the approval of substituting subcontractors from his company, MAAR Construction, to Koloa Development for work on the Wilson Project, and other matters. SX 24 at 221-225e.

Ms. Bonnet further testified about the supplementary payroll for December 4, 2002, and stated that if "you compare the check numbers, like for the first one Arthur Harris, supposedly he was paid with check number 2121, yet on this other supplementary payroll for the same day, the

same time period, the check number is 2133. If you just go down the list it was in sequence, 21, 22, and 23, versus on the other supplementary payroll it's 33, 34 and 35. So there's just a number of discrepancies when you compare the different information." TR at 351-52. She further stated that with respect to the hours reported for that day for these three individuals, if "you look at what they indicated they worked, the hours do not match what's reported. According to the employees they had worked ten hours that day. But only eight hours is being reported for each individual that day." TR at 352.

Ms. Bonnet next testified that there were discrepancies between the employees' personal records and the certified payrolls as to hours worked. TR at 352. She said some employees reported working ten hours per day in their interview statements and in the documentation they provided. Some employees kept personal records of hours worked and comparing that information with the certified payroll, there was a discrepancy in the hours reported. *Id.*

Ms. Bonnet further testified that she compared the inspection reports that Bert Cassanova completed to the certified payrolls and found that the number of employees referenced in the inspection reports matched the number of employees reported on the certified payrolls possibly twice out of thirteen inspection reports. She credibly noted that there were always a larger number of employees reported by Bert Cassanova than were listed on certified payroll. TR at 352-53, 358-59; SX 19; SX 30.

Ms. Bonnet also testified that the certified payroll for December 24, 2002 reports twelve employees as working sixteen hours that day, yet it has been established that the employees were at the bank getting paid that day. Ms. Bonnet testified that apparently Respondent completed the certified payroll for December 24th and recorded eight hours of straight time and eight hours of overtime for each of the employees on that day. TR at 353-54; SX 14 at 158.

Ms. Bonnet next pointed out that the certified payrolls do not reflect any attempt to properly classify and report of type of work being performed. For example, there are usually several different prevailing wage rates for laborers depending on the work being performed, and the contractor is required to classify each type of work and make sure the laborers are paid the appropriate prevailing wage. Here, every payroll that was submitted has only one classification for the entire week. There were also other discrepancies. For example, on November 27, 2002, the inspection report indicates that re-pipe work was being done, yet the certified payroll for that date did not report any plumbers. Ms. Bonnet also pointed out that there are references in the inspection report to ironworkers and carpet installers, none of whom were reported on this certified payroll. TR at 353-54.

Ms. Bonnet continued by stating that Wage and Hour calculated the underpayments by KDMG to employees as totaling approximately \$128,000 in back wages—about \$120,000 for underpayments of the prevailing wages, and \$8,000 in unpaid overtime. TR at 354-55; SX 31.

Ms. Bonnet credibly testified that the calculation in SX 31 of the underpayments to individual employees was constructed from employee testimony since the certified payroll was inaccurate. Some employees had a personal record of hours worked, and in those cases those were used. When there was no personal record of hours worked, an average was computed

based on information provided in the employee interview statements. Wage and hour eventually reconstructed wages that employees had actually received and the amounts they should have received, the difference of which constituted the amount of the underpayment. TR at 356-57. Ms. Bonnet also testified that employees at the Wilson Project were suppose to be paid weekly but were not. TR at 358.

Finally, Ms. Bonnet testified that the CDC, not KDMG or Koloa Development, paid \$49,999.00 as unpaid back wages for the employees. TR at 361; SXs 32, 33 and 34.

Arthur Harris

Arthur Harris testified that he worked at the Wilson Project as a drywall finisher after being hired by William Koloa. TR 143-44. Mr. Harris said that he worked at the Wilson Project from Thanksgiving to just after New Years, eight to twelve hours a day. TR 143-45. He also said that instead of being paid weekly as he had expected, Mr. Koloa paid him \$800 by check two weeks into the project for his work and the work of Mr. Harris' helper, Genell. TR 145-46. Mr. Harris further testified that two to three weeks into the project, a car pulled up to the site with three people from KDMG—Respondent, Mr. Desai, and Mr. Kaul—and Mr. Harris talked to them about the money owed to Mr. Harris and Genell. TR 159-60.

Mr. Harris testified that over the course of the Wilson Project he received four payments that he shared with Genell—the initial \$800 payment, a second payment for \$200, a third payment for \$500 from Mr. Koloa on Christmas Eve at a meeting at a bank, and a fourth payment of \$1500 from Mr. Kaul at KDMG offices in Brea, California on January 22, 2003. TR 147-56. With respect to the meeting at the bank in Santa Monica on December 24, 2002, Mr. Harris testified that checks were disbursed to employees but that they were asked to cash the check, return the money to Mr. Kaul, and accept a second, smaller check for a portion of the amount of the first check. *Id.* Mr. Harris also testified that he was not sure if Respondent was in the bank during the entire December 24 meeting, but at some point Respondent was present outside the bank and handed him a bottle of brandy. TR 155-57.

Rickey LeBlanc

Rickey LeBlanc testified that he worked as a plumber on the Wilson Project re-piping units in the building one at a time. TR at 106. He worked on the project for approximately one or two months with his son as a helper. TR at 106-07. My observation of Mr. LeBlanc's demeanor and testimony responses shows him to be a very credible witness.

Mr. LeBlanc testified that he worked at least eight hours per day, and two to three days a week he worked an hour or two of overtime. TR at 107. He estimated that he worked two Saturdays. *Id.* Mr. LeBlanc also testified that William Koloa told him that he would be paid per unit as the units were completed, and that he had not been told that the Wilson Project was a prevailing wage job. TR at 108. He testified that by the third or fourth weekend, he noticed a posting at the job site that was not "really saying that it was a prevailing wage job, but it was just information that . . . wasn't on normal jobs." *Id.*

Mr. LeBlanc said that he was not paid on a weekly basis for his work. TR at 109. Instead, he testified that he received only one check for \$1700 on Christmas Eve 2002. TR at 109-10, 120. The \$1700 check was the only payment made to Mr. LeBlanc and his son, Romel Shaheed, who worked approximately the same number of hours as his father according to Mr. LeBlanc. TR at 106, 111-12. Mr. LeBlanc testified that despite all of the hours logged by Mr. Shaheed as Mr. LeBlanc's work assistant, Mr. LeBlanc, and not KDMG or Koloa, paid him more than \$500 from his own personal funds. *Id.*

Mr. LeBlanc testified that he expected to be paid \$600 per completed unit and that he completed at least six units over the entire two-month period of the Wilson Project. TR at 120. He further testified that he completed more units after the December 24, 2002 meeting at the bank, and that he took a check for \$1700 at that meeting because that was the amount he thought he was owed at that time. TR at 121. Mr. LeBlanc also said that he discovered at some point after the meeting at the bank that he should have received the prevailing hourly rate of a journeyman, which would have paid more than the \$1700 he received on Christmas Eve. TR at 122-23. He testified that he agreed to accept the payment of \$1700 because he needed the money, as he had two children and bills to pay at that time. TR at 123.

Mr. LeBlanc recalled that both he and his son complained to Mr. Koloa and someone named Rodney³ that they had not been paid. TR at 112. He knew that Respondent was "the superintendent or the guy in charge of running things" at the Wilson Project. TR at 113; SX 19 at 191-96, 199-202, 204-05, 208. He further testified that Mr. Koloa would go to Respondent if he needed something. TR at 113. If Mr. LeBlanc told Mr. Koloa that he needed to be paid, Mr. Koloa would say, "Well, I have to talk to [Respondent]." *Id.*

Mr. LeBlanc also testified about the December 24, 2002 meeting at the bank in Santa Monica with the Wilson Project employees, Respondent, Rodney, Mr. Koloa, and Mr. Kaul. TR at 110, 114-15. Mr. LeBlanc confirmed that the employees were told to sign their checks, cash them, and return money to a table inside the bank where Respondent, Rodney, Mr. Kaul, and others were seated. TR at 110-11, 115-16.

William Koloamatangi

As principal owner of subcontractor Koloa Development, Mr. Koloamatangi⁴ credibly testified that he was inexperienced in such a large government contract as the Wilson Project, having had no previous experience with a prevailing wage job or federal project. TR at 218-19, 239. Before the Wilson Project, he did small maintenance, room additions, drywalls, and plumbing remodels for no more than \$40,000. *Id.* He had never worked on a project the size of the Wilson Project. TR at 219. He identified his signature on the agreement between KDMG and Koloa Development, and stated that Respondent would place various pages from the agreement in front of him to sign and that he never signed any document in the presence of Mr. Desai,

³ Mr. LeBlanc did not give Rodney's last name and was not sure who Rodney worked for, but he testified that he knew Rodney from prior jobs and Rodney had introduced Mr. LeBlanc to Mr. Koloa. TR at 113-14. Mr. Koloa testified that Rodney's last name is Pettillo, "or something like that." TR at 219.

⁴ Mr. Koloamatangi is also referred to in the record and herein as "Mr. Koloa."

KDMG's principal owner. TR at 241-42; SX 7.

Mr. Koloamatangi testified that he did not know the details of the certified payrolls from the Wilson Project and that he took directions about how to proceed with the work from Respondent as Project Manager as KDMG's representative who was present on the job site most frequently. TR at 220-22. He credibly testified that he did not fill out the information contained on the certified payrolls, pointing out that they were not filled in with his handwriting, but he admitted that he did sign them either after they had been filled out by others at KDMG or before they were filled out when Respondent and Mr. Kaul asked for his signature. TR at 222-24; SX 8-15. Mr. Koloamatangi also testified that one time Respondent brought him an envelope with certified payroll information already completed and asked him to bring the papers to the CDC. TR at 223. He said that for at least the first three or four weeks of the two-month project, KDMG completed all of the certified payrolls. *Id.*

Mr. Koloamatangi admitted that he never maintained or completed the hours worked on the Wilson Project on timesheets and that he did not know how to fill in the deductions portions of the certified payrolls. TR at 223-25. He stated that he did not keep track of how many hours the employees worked, nor was he ever asked to do so. *Id.* Mr. Koloamatangi further testified that he did not fill-in or sign the Daily Employee Sign-In sheets. He said that Respondent brought the papers to the job site for the workers to sign. Sometimes the hours were already filled-in, while other times "it was just a blank piece of paper, and they would ask me to ask the guys to just have it signed. And they would fill out the rest at the office." TR at 224-25. Later, Mr. Koloamatangi confirmed that he signed blank documents brought to him by Respondent who would then fill in the certified payroll information so KDMG could take it to the CDC for money disbursement. TR at 245-47. He said that this practice bothered him. TR at 246.

Mr. Koloamatangi testified that he knew the information on the project timesheets was inaccurate because the timesheets showed workers leaving the job at noon or 2:00 p.m. when they were actually there for at least a full eight-hour workday. TR at 225-26, 246; SX 11. The workers' hours were consistently from 8 a.m. to 6 p.m., and sometimes Saturdays. TR at 226. He also testified that only some of the workers were hired by him and he thought their rate of pay was \$10.00 per hour. He said that he "still [does not] understand all these prevailing wages." TR at 226-27, 249. He further testified that only the seven workers listed at SX 11 at 135 were employees he hired, and he had nothing to do with hiring any of the other employees at the Wilson Project. *Id.* He denied supervising the plumbers and roofers who were brought into the job by Rodney. TR at 227.

Mr. Koloamatangi next testified that throughout the entire Wilson Project, no one received their wages on time. He told Mr. Kaul from the start that he thought the project was too big for Koloa Development to finance with respect to materials and wages, and he was told by Mr. Kaul in response that KDMG would finance the work. TR at 227-28. Mr. Koloamatangi also stated that when he looked to KDMG for payment of wages, KDMG would direct him to get the timesheets and certified payrolls signed so KDMG could turn them over to the CDC for payment. TR at 228. He said that Respondent was present when he went to KDMG seeking payment of wages and was asked to fill out timesheets. TR at 228-29.

Mr. Koloamatangi testified that on December 24, 2002, everyone from the project, including the workers, Mr. Desai, Respondent, and Mr. Kaul, went to First Federal Bank in Santa Monica. He said the bank was closing, but Mr. Desai was “a best friend of the bank president. So they couldn’t close, and they waited for us.” TR at 229-33. He further testified that Mr. Desai deposited “a big pocket of money,” or \$34,000 in cash, into Mr. Koloa’s bank account, and that Respondent and others from KDMG told him to write checks and in what amounts to the employees using the certified payrolls. When he did not write the checks quickly enough, Respondent and others also wrote out some of the checks. TR at 231-32, 250. Mr. Koloamatangi testified that the workers were instructed to cash the checks at the bank and give a portion of the cash back to KDMG. *Id.* He further testified that those workers who were angry about having to return a portion of their cashed checks to KDMG were given an extra hundred dollars. TR at 232. The workers were required to sign off on the received check amount or else they would not get paid. *Id.*

Mr. Koloamatangi concluded his testimony by stating that throughout the project Respondent worried about the CDC’s inspectors and would instruct Mr. Koloamatangi to let the workers know they should tell the inspectors that they were being paid the amounts referenced on the certified payrolls. TR at 233. Mr. Koloamatangi also testified that even after the Wilson Project had ended, Respondent would show up where he was working with completed forms for Mr. Koloamatangi to sign in order to get paid more money. *Id.* Mr. Koloamatangi further stated that Respondent and others from KDMG took him out to a restaurant one night and tried to “bribe” him to keep his mouth shut if the Department of Labor asked about the Wilson Project. TR at 233-34. In addition, Mr. Kaul told him after the Wilson Project had ended that KDMG would pay Mr. Koloamatangi’s debt to the Employee Development Division “to keep [him] quiet.” TR at 233-36.

Rajiv Desai

Rajiv Desai testified that he was educated as a scientist with a Ph.D. in mechanical engineering. TR at 163. He stated that he was KDMG’s investor shareholder and he relied on both Kevin Kaul and Respondent for their construction expertise. TR at 163-64, 168. Mr. Desai credibly recalled most of the chronological facts involving KDMG’s involvement with the Wilson Project from mid-November 2002 to early January 2003. However, he was not credible in his attempt to shift blame away from Respondent to Mr. Kaul for KDMG’s improper recordkeeping given that other documentary evidence supports that Respondent had authority to sign on behalf of Mr. Desai and KDMG as a responsible official and representative of the contractor. *See, e.g.,* SXs 26-28.

Mr. Desai further testified that although Respondent had no official title, he was the “hands-on guy” for KDMG and he usually hired the workers as the Project Manager. TR at 164-65, 187-89, 198. Mr. Desai explained that Respondent was paid a monthly salary by KDMG to oversee projects, purchase materials, identify the trades, estimate the jobs, get workers for the particular jobs, ensure the jobs were fulfilled, “chase” the departments for payments, interface with the people at the specific departments, and pick out the jobs for them. TR at 188. Mr. Desai, Mr. Kaul, Respondent and Respondent’s company, MAAR Construction, have worked together on several projects before the Wilson Project. TR at 184, 198. Mr. Desai later stated, however,

that on the Wilson Project, MAAR Construction was originally the proposed subcontractor but Koloa Development was later retained by KDMG to be the subcontractor, and Koloa was responsible for hiring the employees. TR at 166-67.

Mr. Desai testified that in early December, he was told that Koloa Development was not completing the certified payrolls properly so KDMG, through Respondent and Mr. Kaul, would complete the paperwork after talking with Mr. Koloamatangi. TR at 169, 187. Mr. Desai had no personal knowledge of how the payrolls were completed but he knew that KDMG computed the taxes and other deductions. *Id.*

Mr. Desai also stated that at some point during the Wilson Project, he became aware that the employees were not being paid as they were supposed to, and that KDMG was ultimately responsible for payment of their wages. TR at 169-70. He also testified, unconvincingly, that the failure to properly pay wages “seemed” to be Koloa’s issue as he believed that KDMG had forwarded funds to Koloa to pay employees. *Id.*

Mr. Desai testified that he went to the bank in Santa Monica on December 24, 2002 at Mr. Kaul’s suggestion because Mr. Desai was the only signatory on KDMG’s bank account. TR at 170-71, 175. Mr. Desai was not credible in denying that Respondent facilitated the transaction because he also testified that Respondent was present in the bank, aware of what was going on, and coordinating the actions with Mr. Kaul. TR at 171-79, 193, 199. Mr. Desai further testified that the bank transactions involved paying employees amounts that were tied to the certified payrolls as calculated by Respondent to try to show the CDC that the employees had been paid these amounts by checks when, in fact, each employee was asked to pay back some cash to KDMG after they cashed their KDMG check. TR at 175-79, 195-96, 199.

Mr. Desai also stated that each time an employee received a KDMG check on December 24, 2002, they were required to sign a release stating that they had been paid in full and the hours they had worked. TR at 176, 195. Mr. Desai did not know whether Respondent was involved in receiving KDMG checks signed by Mr. Desai for Mr. Kaul to cash and pay KDMG expenses. TR at 189-91. Mr. Desai also did not know why any employees were paid in cash rather than by KDMG check. TR at 201.

Mr. Desai confirmed that KDMG and Mr. Kaul have accepted debarment as part of a settlement with Department of Labor. TR at 183-84; SX 34.

The Remaining Witnesses

The remaining witnesses, Walter Broussard and Genell Vernon, were credible in their testimony which was consistent with the Secretary’s theme of her case, particularly describing: (1) how, on a regular basis, employees were not paid wages on time and were paid for flat rate work or in lesser amounts than were represented in the certified payrolls prepared by Respondent for KDMG and Koloa Development; (2) how, in order for the employees to get paid any wages, Mr. Koloa had to get the funds from Respondent (TR 86-93, 96-99, 126-30, 132-37); and (3) the events surrounding the December 24, 2002 kickback payment meeting at the First Federal Bank

in Santa Monica and Respondent's involvement taking employees into the bank to cash their checks and return a portion of the proceeds to KDMG. TR 91-95, 99-103, 130-31, 138-39.

Further Findings of Fact

Based on the foregoing factual findings, I further find, in sum, that:

At all relevant times, Respondent was aware of the labor standard provisions that governed the Contract on the Wilson Project. Respondent was aware that the laborers and mechanics who worked under the Contract were required to be paid the wage rates set forth on Wage Determination CA 020028 dated 8/9/02 on a weekly basis. Respondent was aware that certified payrolls must be submitted to the contracting agency, the CDC. Furthermore, he knew that the certified payrolls must contain accurate information regarding the hours worked, job classifications, wage and fringe benefit rates paid, and total wages paid to all laborers and mechanics who performed work under the Contract.

The laborers and mechanics who worked on the Wilson Project from November 11, 2002 through January 10, 2003 were not paid in compliance with the labor standard provisions governing the Contract. They were not paid the wage rates set forth in the Wage Determination, they were not paid fringe benefits, they were not paid for overtime, and they were not paid on a weekly basis.

At all relevant times, Respondent was aware that the laborers and mechanics who performed work on the Project were not being paid for their work as required by the Contract.

Respondent prepared all of the certified payrolls submitted to the contracting agency, the CDC, regarding work performed on the Wilson Project.

The certified payrolls were not accurate in that, as to the laborers and mechanics who performed work under the Contract, the certified payrolls did not accurately reflect the hours worked, wage rates paid, fringe benefits paid, and total wages paid. Furthermore, the certified payrolls showed check numbers purporting to represent wage payments to the workers which were not actually made.

On December 24, 2002, Respondent was present at the First Federal Bank in Santa Monica, California, where laborers and mechanics who had worked on the Wilson Project were required to cash checks given to them by KDMG, and return a portion of the cash to KDMG.

ANALYSIS

1. Credibility Analysis

Respondent and Mr. Koloamatangi

Generally, I find Respondent's testimony to be credible as to his overall chronology of events at the Wilson Project in 2002 and 2003. However, I reject Respondent's testimony

concerning his limited role in the preparation of the certified payrolls and his participation at the December 24, 2002 meeting at the bank. Instead, I find that Respondent actively participated with KDMG's other principal officers to violate the Related Acts by requesting funds from the CDC with the apparent authority to act on behalf of KDMG. I further find that Respondent falsified the certified payrolls and forwarded them on to the CDC for funds. Finally, I find that Respondent was an agent for KDMG who actively participated with other KDMG officials in the kickback scheme on December 24, 2002.

Observing Respondent's demeanor at hearing, I saw his counsel continuously ask him leading questions which Respondent was well-rehearsed to answer with short affirmations or denials which were not credible. See TR at 317-19. Respondent was also not credible when he testified that while he signed a KDMG letter to the CDC, he did not write the letter. TR at 305-06; SX 24.

In addition, Respondent's testimony was inconsistent, misleading, and contradicted by an overwhelming amount of other evidence in the record which completely undermines his credibility with respect to the submission of the certified payrolls and the events surrounding the December 24, 2002 kickback meeting. Specifically, I find that Respondent's credibility was impeached as follows:

- a. While Respondent denied taking an active role in preparing the certified payrolls for KDMG, Mr. Koloamatangi's testimony was far more credible and it contradicted Respondent's testimony concerning his role as the person at KDMG responsible for creating the false certified payrolls. For example, Mr. Koloamatangi credibly stated that Respondent was his contact at the project for all purposes. Mr. Koloamatangi also testified that he did not know the details of the certified payrolls and that he took directions at the project from Respondent as KDMG's representative and Project Manager. TR at 220-22. Mr. Koloamatangi credibly testified that he did not fill out the information contained on the certified payrolls, which were not filled in with his handwriting, but that he did sign some of them either before or after they had been filled out by KDMG when Respondent and/or Mr. Kaul asked him to sign them. TR at 222-24; SX 8-15. Mr. Koloamatangi confirmed that he signed blank documents brought to him by Respondent who would fill in the certified payroll information later so that KDMG could take it to the CDC for money disbursement. TR at 223, 245-47. He further stated that for at least the first three or four weeks of the two-month project, KDMG completed all of the certified payrolls. *Id.*

Mr. Koloamatangi also admitted that he never maintained or completed the hours worked on timesheets for the Wilson Project and did not know how to complete the payroll. TR at 223-25. He did not keep track of hours worked at the project nor was he ever asked to. *Id.* Mr. Koloamatangi did not fill-in or sign the Daily Employee Sign-In sheets but he knew that Respondent brought them to the project for workers to sign either already filled-in or with no hours yet filled in, and Respondent would fill them in later at the KDMG office. TR at 224-25. Mr. Koloamatangi testified that the information on the project timesheets was

inaccurate because the timesheets showed workers leaving the job at noon or 2:00 p.m. when they were always there for at least a full eight-hour workday. TR at 225-26, 246; SX 11. The hours were consistently from 8 a.m. until 6 p.m., and sometimes Saturdays. TR at 226. Mr. Koloamatangi hired only some of the workers and did not understand the prevailing wage rates for the Wilson Project. TR at 226-27, 249. Mr. Koloamatangi testified that throughout the entire Wilson Project, no one was ever paid their wages on time. Mr. Koloamatangi said that when he looked to KDMG for wages, KDMG would tell him to get the timesheets signed as well as the certified payrolls so KDMG could turn them over to the CDC for payment. TR at 228. He also stated that Respondent was present when he went to KDMG seeking payment of wages for the employees. TR at 228-29.

- b. Respondent's testimony included events involving Mr. Kaul, the administrator at KDMG who settled with the U.S. Department of Labor and was represented to be in continued communication with Respondent as he was mentioned as a potential witness for Respondent but was not called by Respondent's counsel. *See* TR at 366-67, 369. I find it relevant and undermining of Respondent's veracity that he chose not to subpoena or call Mr. Kaul as a potentially corroborating witness, particularly since it appeared that Respondent or his counsel were communicating with Mr. Kaul and no evidence was submitted that he was unavailable.
- c. Respondent's testimony about his limited involvement and lack of understanding that employees were making kickback payments at the bank on December 24, 2002 is contradicted by several of the employees and by Mr. Koloamatangi, who stated that Respondent took an active role with Mr. Desai and Mr. Kaul at the bank which included writing checks and using the certified payrolls to determine the amounts for Mr. Koloamatangi to write on the checks. TR at 91-95, 99-103, 110-11, 115-16, 130-31, 138-39, 179, 229-33, 250. I find that Respondent took an active role as a responsible person for KDMG at the Wilson Project and continued to do so even after the work stopped in January 2003. *See* TR at 233-36.

In conclusion, I witnessed Respondent's demeanor at trial and find that his temperament and evasiveness were consistent with much of the testimony from the other witnesses that he was KDMG's responsible person and representative as project manager, certified payroll preparer, and agent in the view of the CDC for the payment of funds under the government contract. I also find that Respondent took an active role in KDMG's kickback scheme at the bank on December 24, 2002. As stated above, the overwhelming weight of the evidence shows that Respondent acted with apparent authority to bind KDMG and request funds from the CDC under the Wilson Project government contract. The evidence also shows that Respondent and Mr. Kaul were the primary representatives for KDMG who had the knowledge and experience to complete the Wilson Project renovation and comply with the prevailing wage requirements of the government contract. Mr. Desai, on the other hand, merely supplied the initial investment in KDMG, and had no knowledge or experience with performing the Contract or complying with the requirements of the Related Acts.

Based on the foregoing, including the inconsistencies and contradictions in Respondent's testimony, his behavior and other evidence, I find and conclude that he was not a credible witness and I accord little weight to his testimony concerning his involvement with the events connected to the Wilson Project.

Carmen Simon

Ms. Simon testified credibly about her interaction on behalf of the CDC with Respondent for KDMG. Ms. Simon plausibly testified that she went to the Wilson Project in January 2003 and met Respondent who identified himself as the Project Manager for KDMG. TR at 52; SX 25 at 227. Soon thereafter, CDC sent correspondence to KDMG which let KDMG know that there were labor compliance issues. *See* TR at 53-60; SX 20-24 at 225(a)-225(d). Ms. Simon was most credible when she testified with noted ease that Respondent had handled the CDC's inquiries for KDMG. TR at 61; SX 24.

Michele Bonnet

I observed Ms. Bonnet credibly testify that KDMG's certified payrolls did not accurately reflect all of the employees who worked on the Wilson Project. TR at 348. She was believable when she explained that Wage and Hour compared information from the employee interview statements with the certified payroll and found a number of inconsistencies or discrepancies, including the facts that the employees indicated they were not paid weekly and were not paid the prevailing wages that were reported on the certified payroll.

There were also other blatant inconsistencies which were lucidly explained by Ms. Bonnet. For example, Ms. Bonnet credibly concluded that the hourly rates reported on the certified payroll were higher and did not correspond to the testimony of the employees. TR at 348-49. She also credibly testified that there were at least three people who worked on the job site who never appeared in any certified payroll (James Steward, Larry Williams, and Ramel Shaheed), two of which worked on the job site nearly throughout the entire project. TR at 349. In addition, Ms. Bonnet explained that there were another three people (Genell Vernon, Arthur Harris, and Walter Broussard) who worked on the job site and were only recorded on one supplementary certified payroll. *See* TR at 349-50; SX 24 at 225A and 225D.

Based on my observation at trial, I find that Ms. Bonnet credibly testified that the underpayment calculations in SX 31 for individual employees at the Wilson Project were constructed from the employee testimony because the certified payrolls were inaccurate. Wage and Hour eventually reconstructed the wages that the employees actually received and compared those amounts with the amounts they should have received in order to determine the amount of the underpayments. TR at 356-57. Ms. Bonnet also accurately testified that employees at the Wilson Project were supposed to be paid weekly but were not. TR at 358.

Arthur Harris

I find that Mr. Harris was a credible witness. Mr. Harris worked at the Wilson Project as a drywall finisher after being hired by Mr. Koloa. TR 143-44. Mr. Harris credibly testified that

despite working 8-12 hours per day from November 2002 to early January 2003, he was not paid weekly for his or his helper's work at the Wilson Project. TR 143-46. I credit his testimony that instead of being paid weekly as he had thought, he received only four payments in varying amounts which he shared with his helper, Gennell. TR 147-56. With respect to the meeting at the bank on December 24, 2002, Mr. Harris testified consistently with the other employee witnesses that checks were disbursed to the employees but that they were asked to cash the checks, return cash to Mr. Kaul, and accept a second check for a smaller portion of the first check. *Id.*

Mr. Desai

Overall, I found Mr. Desai evasive and biased toward Respondent. I further find that he was not credible as his testimony was impeached by other witnesses or documentary evidence.

Mr. Desai was not credible when he testified that Respondent obtained the hours that employees worked on the Wilson Project from Mr. Koloamatangi and then performed the accounting for the certified payrolls. TR at 202-05. Rather, I find that Mr. Koloamatangi was more credible when he stated that he did not hire all of the employees and was not involved in monitoring the hours worked, especially for those employees outside of Koloa Development. *See* TR at 226-27, 249. Mr. Desai was also not credible when he identified Respondent's and Mr. Kaul's signatures on check requests to the CDC on behalf of KDMG but testified that neither Respondent nor Mr. Kaul were authorized to sign the check requests for KDMG, yet the funds requested and received by Respondent were never returned to the CDC. TR at 206-14; SX 26 at 229; SX 27 at 239; SX 28 at 248. In particular, Mr. Desai was not believable when I observed that he paused when I directly asked him whether he authorized Respondent to sign SX 26 at 229 on his behalf, and I noted that either Respondent or his counsel whispered "no" *before* Mr. Desai responded that he did not authorize Respondent to sign SX 26 at 229 on his behalf. *See* TR at 206.

I do find that Mr. Desai was credible in stating that, in Respondent's presence at the bank, he questioned the alleged kickback practice whereby the employees were not allowed to retain the full amount of the KDMG checks, saying: "How can this actually make sense, because, effectively, you're not paying it out?" TR at 176-79.

Based on the foregoing credibility analysis, I reject Mr. Desai's testimony which improperly attempted, for Respondent's benefit, to shift blame from Respondent onto Mr. Kaul and/or Mr. Koloamatangi. The weight of the evidence shows instead that Respondent was experienced with government contracts and ran the Wilson Project for KDMG.

2. The Contract At Issue Is Subject to the Requirements of the DBA and Related Acts

The parties agree that the Wilson Project Contract entered into on behalf of KDMG as prime contractor is subject to the DBA and its Related Acts because the Contract was financed through a federal agency. Respondent prepared the document that KDMG used to bid on the Contract for the Wilson Project. *See* SX 3, 6, TR 40:17-22; 275:25-277:24; ALJX 10 at 2; ALJX 11 at 2. Accordingly, I find that the Contract incorporated and was subject to the DBA, the Housing and Community Development Act of 1974, and the Contract Work Hours and Safety

Standards Act, two acts related to the Davis-Bacon Act. I further find that Respondent admitted that the Davis-Bacon Act requirements, including the debarment provision, applied to the Contract and are applicable to this proceeding. See 29 C.F.R. §§ 5.1(a)(3) and 5.12(a)(1).

3. Violations of the Related Acts Occurred Throughout the Wilson Project

In a Fair Labor Standards Act case of *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), the United States Supreme Court promulgated the evidentiary principles governing claims for unpaid wages which have been applied by the Administrative Review Board (“ARB”) in cases under the DBA, such as the instant case. See *Thomas & Sons Building Contractors, Inc.*, ARB No. 00-050, 1996-DBA-33 (ARB Aug. 27, 2001), 2001 WL 1031629 at *4-5 (denying reconsideration). Under *Anderson* and *Thomas*, the Department of Labor (“DOL”) bears the initial burden of proof to establish the amount of back wages to which workers are entitled “as a matter of just and reasonable inference.” See *Anderson*, 328 U.S. at 687-88. The burden then shifts to the respondent to rebut with evidence of the precise amount of work performed or other evidence to overcome the inference drawn from DOL’s evidence. *Id.*

In the instant case, seemingly everyone but Respondent concedes that the workers from the Wilson Project job site were not paid as required by the Contract and that other violations of the Related Acts occurred from November 11, 2002 through January 10, 2003. The Secretary’s calculations of the wage underpayments were verified by Wage and Hour investigator Michele Bonnet, who took over the KDMG investigation after her predecessor, Marie Koshkarian, left Wage and Hour. TR at 344. Ms. Bonnet testified that as a result of the investigation which began in January 2003, Wage and Hour concluded there were violations which included a failure by KDMG, the prime contractor, to pay the prevailing wages and fringe benefits; failure to pay to pay overtime; falsified certified payrolls; and kickbacks to KDMG from the employees. TR at 345-48. Wage and Hour set forth its conclusions regarding these violations in the determination letter attached to the Order of Reference. TR at 347; SX 34; ALJX 1. Wage and Hour also charged individuals associated with KDMG, including Mr. Desai, Mr. Kaul and Respondent, with the violations. TR at 348.

As previously noted, I credit the testimony of Ms. Bonnet and I find that through her testimony, the Secretary has established the existence of violations of the labor standard provisions of the Related Acts.

Ms. Bonnet testified that KDMG’s certified payrolls did not accurately reflect all employees who worked on the Wilson Project. TR at 348. Wage and Hour reached this conclusion by comparing the information gathered from the employees’ interview statements with the certified payrolls. There were a number of inconsistencies or discrepancies based on what the employees indicated they were paid. Specifically, the employees indicated they were not paid weekly and were not paid the prevailing wages that were reported on the certified payroll. In addition, there were other inconsistencies involving the number of work hours reported on the certified payrolls and the fact that the certified payrolls reflected check numbers, whereas some employees indicated they had received only cash. Some employees said that they were paid on a salary basis or on a per unit basis. Others indicated that they were paid \$10.00 an

hour. However, the hourly rates reported on the certified payrolls did not correspond to the testimony of the employees. TR at 348-49.

Ms. Bonnet testified that there were at least three people who worked on the job site but never appeared in any certified payroll. Those three individuals were James Steward, Larry Williams, and Ramel Shaheed, two of whom worked on the site for nearly the entire project. TR at 349.

Ms. Bonnet identified another three employees—Genell Vernon, Arthur Harris, and Walter Broussard—who worked at the job site and were only recorded on one certified payroll for December 4th, 2002. Indeed, that was a supplementary payroll which was only submitted by KDMG after it was requested by the CDC. A CDC inspector had interviewed these three individuals at the job site and notified KDMG that the individuals were working but were not listed in the certified payroll. Consequently, a supplementary payroll for the three individuals was submitted by KDMG for that day. Although the supplementary payroll indicates that the three employees were paid for their work on December 4, 2002, Ms. Bonnet testified that there is no evidence that they actually received the checks corresponding to the check numbers listed next to their names. TR at 349-50; SX 24 at 225A and 225D.

Ms. Bonnet next testified about the apparent discrepancies between the employees' personal records and the certified payrolls as to hours worked. TR at 352. She said some employees reported working ten hours a day in their interview statements and some kept personal records of hours worked. Comparing that information with the certified payroll, there was a discrepancy of underreported hours worked. *Id.*

In addition, Ms. Bonnet compared the inspection reports by Bert Cassanova to the certified payroll and found that the number of employees referenced in the inspection reports matched the number of employees reported on the certified payroll only twice in thirteen inspection reports. She noted that there were always a larger number of employees reported by Mr. Cassanova than were listed on certified payroll. TR at 352-53, 358-59; SX 19; SX 30.

Ms. Bonnet also pointed out that the certified payroll for December 24, 2002 reports that twelve employees worked sixteen hours that day, yet there is no real dispute that the employees were at the bank for part of that day. Ms. Bonnet testified that Respondent apparently completed the certified payroll for December 24th and recorded eight hours of straight time and eight hours of overtime for each of the employees. TR at 353-54; SX 14 at 158.

Ms. Bonnet next pointed out that the certified payrolls do not properly classify and report type of work being performed. While the contractor is required to classify each type of work and ensure that workers are paid the appropriate prevailing wage, here every payroll submitted had only one classification for the entire week. There were also myriad other discrepancies. For example, on November 27, 2002, the inspection report indicates that re-piping work was being done, yet the certified payroll for that date did not report any plumbers. Ms. Bonnet also testified that the employees were supposed to be paid weekly but in fact were not. TR at 358.

I find it noteworthy that Respondent represented himself as responsible for replying to the CDC's inquiries into KDMG's labor compliance status in early February 2003, and he telefaxed a detailed explanation on behalf of KDMG with amended certified payrolls and other paperwork. SX 24 at 221-225e.

Ms. Bonnet's testimony, which I have credited, also establishes the method that was used by Wage and Hour to calculate the amount of back wages owed to the Wilson Project workers. Wage and Hour calculated the underpayments by KDMG to employees as totaling approximately \$128,000 in back wages—about \$120,000 for underpayments of the prevailing wages, and \$8,000 in unpaid overtime. TR at 354-55; SX 31.

Ms. Bonnet credibly testified that the calculation of underpayments to individual employees was constructed from employee testimony since the certified payroll was inaccurate. Wage and Hour used some employees' personal records of hours worked, and when there were no personal records, an average was computed based on information provided in the employee interview statements. Wage and Hour eventually reconstructed the wages that employees had actually received and the amounts they should have received, the difference of which constituted the amount of the underpayment. TR at 356-57; SX 31. Finally, Ms. Bonnet testified that the CDC, not KDMG or Koloa Development, paid \$49,999 as back wages for the employees. TR at 361; SX 32, 33 and 34.

Respondent argues that he had no actual knowledge that any certified payrolls were inaccurate or falsified. Rather, he asserts that he simply took the information given to him by Mr. Koloamatangi and "merely extended the payroll." ALJX 11 at 3. He also claims that he had no actual knowledge that the cash returned by the employees to KDMG officials on December 24, 2002 constituted an illegal kickback scheme. *Id.* at 3, 6-7.

These arguments aside, Respondent did not submit any evidence to contradict the Secretary's back wage calculations or any of the other alleged violations under the Related Acts in connection with the Wilson Project. I find that the information on which the Secretary relied is accurate and probative evidence of the employees' work time and attendance. I further find that violations under the Acts occurred at the Wilson Project as described in the credible testimony of Ms. Bonnet, Mr. Koloamatangi, and several employees at the project, including untimely wage payments, wage underpayments, falsified certified payrolls, fraudulent requests for disbursements from the CDC, and KDMG's involvement in an illegal kickback scheme on December 24, 2002.

Based on the testimony of Ms. Bonnet and the various employees, the evidence on which Wage and Hour relied and the methodology used in calculating the wage underpayments, I find that the Secretary has carried her initial burden of establishing that the employees performed work on the Wilson Project site for which they were inadequately compensated (a fact which does not seem to be controverted by Respondent). I also find that the Secretary has established by "just and reasonable inference" the amount and extent of the work that was performed and the amounts by which the workers were underpaid. *See Anderson v. Mt. Clemens Pottery*, 328 U.S. at 687- 88. *Anderson* held:

The burden then shifts to the employer to come forward with evidence of the **precise** amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the [Secretary's evidence]. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

Id. (emphasis added). As noted above, the Administrative Review Board has applied the *Anderson* principles to cases under the Related Acts.

Based on the preceding discussion, I find that Respondent has failed to submit evidence refuting any of the documented violations under the Acts by showing, for example, that Wage and Hour credited workers with inflated work hours or failed to credit wages duly paid for work performed on the site. Accordingly, I find that the Secretary has established the occurrence of violations of DBA and the Related Acts which were either directly or indirectly attributable to prime contractor KDMG, including untimely wage and overtime payments, wage and overtime underpayments, falsified certified payrolls, fraudulent requests for disbursements from the CDC, and KDMG's involvement in an illegal kickback scheme on December 24, 2002.

4. Respondent Should Be Debarred

The Secretary seeks to debar Respondent from federal government contracts for his aggravated and/or willful violations of the labor standard provisions of the DBA and its Related Acts for his failure to ensure that employees of prime contractor KDMG and those of the subcontractor were paid the required wage rates for all hours worked. The Secretary contends that Respondent created false payroll records, fraudulently requested funds under the Contract from the CDC, and participated in the illegal kickback scheme on December 24, 2002. Prime Contractor KDMG and individual Kevin Kaul agreed to a three-year debarment for their conduct in connection with the Wilson Project.⁵ See SX 34.

Respondent's defense to the Secretary's allegations is that if he made mistakes, they were unintentional and, at worst, his conduct constitutes negligence rather than willful violations of the Acts. Respondent argues that he was innocent of wrongdoing because he simply followed the instructions of Mr. Koloamatangi with respect to the certified payrolls and the instructions of Mr. Kaul with respect to the December 24, 2002 bank transactions.

Debarment for violation of labor standard provisions contained in DBA Related Acts is governed by 29 C.F.R. § 5.12(a)(1), which provides that:

Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes . . . , such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years

5. Respondent argues that Koloa Development, the unapproved subcontractor at the Wilson Project and its principal officer, William Koloamatangi, should also be debarred for their involvement at the Wilson Project. However, this proceeding is limited to the question of the debarment of Respondent.

(from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list . . .) to receive any contracts or subcontracts subject to [the DBA or Related Acts].

Both the Housing and Community Development Act and the Contract Work Hours and Safety Standards Act are Davis-Bacon Related Acts. *See* 29 C.F.R. §§ 5.1(a)(46) and 5.1(a)(3). Therefore, the DBA debarment provision is applicable to this proceeding.

Under the CWHSSA, “the burden is on the Secretary to establish that the violations are ‘aggravated or willful’ such that debarment is warranted.” *In re Hugo Reforestation, Inc.* ARB Case No. 99-003, 1997-SCA-20 (ARB Apr. 30, 2001). “Reckless disregard” of the requirements of the law is sufficient to meet the “aggravated or willful” standard. *Structural Concepts, Inc.*, WAB Case No. 95-02 (November 30, 1995). In addition, falsification of certified payrolls or failure to pay prevailing wage rates may constitute aggravated or willful violations of the Acts. *Star Brite Construction Co., Inc.*, ARB No. 98-113, 1997-DBA-12, at 7 (ARB June 30, 2000); *A.T. Fletcher & Co.*, 92-DBA-6, at 5 (ALJ May 26, 1995). Under the DOL regulations and ARB precedent, a contractor debarred under the Related Acts is placed on the ineligibility list for a period not to exceed three years, 29 C.F.R. § 5.12(a)(1), from which the contractor may petition to be removed after six months. 29 C.F.R. § 5.12(c); *In re Hugo Reforestation, supra*, at 8-9.

Respondent admits that he was the Project Manager of the Wilson Project, but denies that he actively falsified the certified payrolls. ALJX 11 at 5. Respondent asserts that Mr. Koloamatangi, the subcontractor’s agent, was present on the job site on a daily basis and was in a position to accurately record the employees’ time. *Id.* at 6. Respondent submits that Mr. Koloamatangi provided him with the hours worked and the employees’ labor classifications, and Respondent had “no basis to doubt the information given to him [by Mr. Koloamatangi] as untrue or incorrect.” *Id.* at 5-6.

Contrary to Respondent’s contentions, I find that Respondent directed and supervised KDMG’s performance under the Contract, and that the employees and Mr. Koloamatangi credibly and consistently testified that they went to Respondent for all project needs, including the payment of wages. Respondent testified that he determined what hourly wage rates and deductions to set forth in the certified payrolls. Although Respondent attempts to shift blame for the inaccurate content of the payrolls to Mr. Koloamatangi, I have previously credited Mr. Koloamatangi’s testimony that he relied on Respondent to supply all of the information for the certified payrolls, including the applicable job classifications and the hourly wage rates under the contract and the prevailing wage determination. TR at 220-29, 245-49, 292-93; SX 8-16. Respondent admitted to filling in information on the certified payrolls (TR at 292-93, 307, 367; SXs 8-16; ALJX 10 at 5), and calculating the required deductions for purposes of the certified payrolls. TR 292-23. Investigator Bonnet testified without contradiction that based on interviews with workers who appear in the payrolls, the payrolls contain false information regarding the workers’ job classifications, hourly wage rates and wages paid. TR at 353-58.

Respondent testified that he had prior experience in prevailing wage jobs and understood that certified payrolls were required and that they must be accurate. TR at 270-75. It is also apparent given his prior work on government contracts that Respondent was aware that the

Wilson Project Contract was subject to the DBA and Related Acts, which obligated KDMG to comply with the relevant labor standards provisions, including the Wage Rate Determination that was part of the Contract, with respect to its subcontractors and its own employees. Stips.1-3; TR 62, 88, 113, 131-32, 269-300; SX 35-37.

I find that Respondent made no effort to submit accurate certified payrolls in connection with the Wilson Project. I further find that Respondent, on behalf of KDMG, purposefully falsified the certified payrolls by understating the total hours worked by employees, and that he fraudulently secured the employees' signatures on blank time sheets prior to his intentionally filling in fictitious hours worked and wage rates paid to employees to seemingly go along with the false certified payrolls figures. In my view, Respondent's use of blank time sheets and blank payrolls that he had signed by Mr. Koloamatangi gives rise to a presumption of concealment which is adequate under the DOL regulations to show a willful violation of certified payroll and overtime requirements necessary for debarment. *See Janik Paving & Construction*, 828 F.2d 84, 94 (2nd Cir. 1987).

Respondent asserts that he was "acting as an employee of KDMG. He was not the contractor or subcontractor." ALJX 11 at 6. It has been held that the primary issue in determining whether an individual is a proper subject for debarment is whether or not that person had knowledge of the wrongdoing. *See, e.g., Facchiano v. Constr. Co., Inc. v. U.S. Department of Labor*, 987 F.2d 206, 214 (3rd Cir. 1993). In a case involving the McNamara-O'Hara Service Contract Act of 1965, the ARB held that the term "party responsible" includes not only corporate officers and owners but also individuals, such as Respondent here, who are "responsible for a service contractor's performance of the contract." *In re Rasputin, Inc.*, ARB Case No. 03-059, 1997-SCA-32 (ARB May 28, 2004). Having reviewed Respondent's job duties, which included overall project management and responsibility for completing and submitting certified payrolls, and given Respondent's undeniable awareness that the certified payrolls he was submitting were inaccurate, I find that Respondent is subject to debarment. *See Northeast Energy Services, Inc.*, 2000-DBA-3 (ALJ Feb.12, 2002) (Project Manager debarred for submitting false payroll).

Respondent also argues that he stepped in "to assist in the calculations only" when it became apparent that Koloa Development needed assistance in calculating the certified payrolls. ALJX 11 at 3. However, even if Respondent agreed to prepare the certified payrolls solely as an accommodation to KDMG and/or Koloa Development, I fail to see how this could exonerate him from responsibility for the payroll falsifications. Nor would Respondent be exonerated even if he relied wholly on misinformation supplied to him by Mr. Koloamatangi, as KDMG was the contractor certifying that: (1) the records were accurate; and (2) they did not omit any employees of either KDMG or the subcontractor Koloa Development who worked at the Wilson Project. Moreover, as explained above, I discredit Respondent's testimony that he relied wholly on information provided by Mr. Koloamatangi. Respondent knew that employees were complaining that they were not being paid properly throughout the duration of the Wilson Project. TR 295-99; ALJX 10 at 5. When the employees were paid for a portion of their earned wages, either KDMG or Koloa Development would make the payment in cash or check. TR at 364-65. Respondent expressed concern that the employees might complain to the "Labor Board" because they were not being paid as required by the Contract. TR 296-97; ALJX 10 at 5. Respondent was aware that the certified payrolls he filled out were to be submitted to the CDC (TR 293), that the

certified payrolls were supposed to be accurate (TR 297), and that the employees who worked on the Wilson Project were supposed to be paid weekly. TR 299; ALJX 10 at 5. Nevertheless, none of the certified payrolls were accurate from the beginning of the Wilson Project until it concluded in January 2003. TR at 365-66.

As discussed above, it has been established that KDMG failed to pay the prevailing wage rate to employees at the Wilson Project. In addition, the certified payrolls were false in that they failed to list certain employees who worked on December 4, 2002, when the testimony shows that they were on the job that day and Respondent, on behalf of KDMG, submitted an amended certified payroll after the fact listing the three employees. TR at 305-06, 350-52. The evidence also shows that while the certified payrolls indicate that prevailing wages were paid for work listed on the payrolls, the payrolls regularly understated the number of hours actually worked. The certified payrolls also refer to weekly wage payments that were not paid weekly, if at all. In light of the foregoing, I reject Respondent's arguments and find that he violated the Related Acts by preparing false certified payrolls on behalf of KDMG either intentionally or with reckless disregard of the requirements of the applicable laws.

I also reject Respondent's arguments that his "presence at the bank on Christmas Eve was not as a participant or a conspirator in the kickback scheme," and he had "no actual knowledge that the money being given back by the employees . . . were part of a kickback scheme." ALJX 11 at 6-7. It is undisputed that Respondent was present at the bank and that he brought the employees into the bank one at a time so that they could cash checks which were written out by Mr. Koloa. Respondent told Mr. Koloa how much to write out the checks for, and even wrote some checks himself. TR at 231-32, 250. Respondent also observed the employees cashing checks and returning cash back to KDMG officials. TR 305:3-21; ALJX 10 at 5. I find that this constitutes participation by Respondent in the kickback operation. As the Secretary correctly points out, "requiring employees to 'kick back' their Davis-Bacon wages is itself deliberate conduct that violates the law and regulation—indeed it is 'aggravated or willful' conduct that warrants debarment under 29 C.F.R. § 5.12(a)(1)." ALJX 10 at 8 (citing *Killeen Electric Company, Inc.*, WAB Case No. 87-49, at 5 (Mar. 21 1991), 1991 WL 494685).

I do not find that Respondent's violations under the Acts are minor or inadvertent or that disbarment would be wholly disproportionate to the offense and accordingly, no extraordinary circumstances exist to shorten his debarment. Debarment may in fact "be the only realistic means of deterring contractors from engaging in willful [labor] violations based on a cold weighing of the costs and benefits of non-compliance." *Janik Paving*, 828 F.2d at 91.

5. Respondent's Participation in the Kickback Scheme Also Warrants Debarment

As described more fully above, I find that Respondent wholly participated in the December 24, 2002 kickback scheme at the bank in Santa Monica. In addition to constituting aggravated and willful violations of the Related Acts, Respondent's role in the scheme also violates the Copeland "Anti-Kickback" Act. This also requires debarment. *See Marques Enterprises*, 1993 WL 259336 (E.D. Pa 1993). *See also In the Matter of Killeen Electric Co., Inc.*, WAB Case No. 87-49 (March 21, 1991) (Copeland Act violations are, in themselves, "willful" within the meaning of [29 C.F.R. § 5.12(a)(1)]).

CONCLUSION

In conclusion, I find that Respondent committed aggravated and willful violations of the labor standard provisions of the Related Acts within the meaning of 29 C.F.R. § 5.12(a)(1), in that he:

- a. was aware of the obligations to comply with the labor standard provisions of the Contract;
- b. prepared certified payrolls and submitted them to the contracting agency when he knew them to contain false and/or inaccurate information;
- c. participated in a kickback scheme.

Respondent's conduct evidences his intent to evade or a purposeful lack of attention to the requirements of the Related Acts. *See L.T.G. Construction Co.*, WAB Case No. 93-15 (Dec. 30, 1994), 1994 WL 764105. Debarment of Respondent and all entities in which he has a substantial interest, i.e., MAAR Construction, is authorized under the Related Acts, and debarment is warranted for Respondent's aggravated and willful violation of the Related Acts, as described herein.

ORDER

Based on the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED** that:

The Secretary shall transmit to the Comptroller General of the United States the names of Respondent Mubarak Rajpoot, also known as Mabarak Ahmed Rajpoot and Roger Rajpoot, and MAAR Construction, Inc., along with any firm in which they have a substantial interest, to be placed on the ineligible list for a period not to exceed three years from the date of the publication pursuant to the Davis-Bacon Act, 40 U.S.C. § 3144 and 29 C.F.R. § 5.12.

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GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within forty (40) days of the date of issuance of the administrative law judge's decision. *See* 29 C.F.R. § 6.34. The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. The Petition must refer to the specific findings of fact,

conclusions of law, or order at issue. *See* 29 C.F.R. § 6.34. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

When a Petition is timely filed with the Board, the administrative law judge's decision is inoperative until the Board either (1) declines to review the administrative law judge's decision, or (2) issues an order affirming the decision. *See* 29 C.F.R. § 6.33(b)(1).

At the time you file the Petition with the Board, you must serve it on the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW,